

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

ADAMS COUNTY

and

LABOR ASSOCIATION OF WISCONSIN, INC.

and

LARRY WARREN, KENNETH BITSKY, SCOTT
MCLAUGHLIN, MARK PUERLING AND RANDY
WHITE

Case 56
No. 41997
MA-5525

Appearances:

Mr. Dennis A. Pedersen, Representative, Route 1, P.O. Box 288, Tomah, Wisconsin 54660, for the Labor Association of Wisconsin, Inc.

Mr. Charles A. Pollex, Hollman & Pollex, Attorneys at Law, 313 Main Street, Friendship, Wisconsin 53934, for the County.

Messrs. Larry Warren, Mark Puerling, Scott McLaughlin, on their own behalf at hearing and Mr. Kenneth Bitsky, by letter.

ARBITRATION AWARD

On October 31, 1978, I issued an Arbitration Award which concluded that Adams County did not have just cause to discharge Larry Warren in May, 1976. Said Award stated:

AWARD

On the basis of the foregoing and the record as a whole, it is the decision and award of the undersigned arbitrator that the May 3, 1976 discharge of the grievant was not for just cause; that said discharge as it is reflected in the Employer's records shall be reduced to a thirty day suspension commencing May 3, 1976; that the Employer shall immediately proffer reinstatement to the grievant and pay him an amount of money equal to that which he would have earned between expiration of the afore-described suspension and the

date on which he is reinstated or rejects a proffer of reinstatement, less any monies that he earned or received while discharged that he would not otherwise have earned or received.

On November 30, 1978, I issued a Supplemental Award at the request of the parties. Said Award stated:

SUPPLEMENTAL AWARD

That the Employer shall immediately offer to reinstate the grievant to the position he held at the time of his discharge; that the amount of back pay, if any, owed the grievant shall be determined with reference to the monies the grievant would have earned in said position between the date on which his 30 day suspension expires and the date on which he is reinstated or rejects an offer of reinstatement; and that the Employer shall immediately make the grievant whole in all respects including the restoration of seniority.

In March, 1984, I issued a clarification of my Supplemental Award by way of the following letter:

March 5, 1984

Mr. Michael Spencer
Business Representative
Teamsters Union Local
No. 695
1314 North Stoughton Rd.
Madison, WI 53714

Ms. Isabel Sopher
Undersheriff
Adams County Sheriff's Dept.
P.O. Box 279
Friendship, WI 53934

Re: Adams County (Sheriff's Dept.)
Case XXVI No. 22633 MA-1088
(Warren Discharge)

Dear Mr. Spencer & Ms. Sopher:

I am writing to confirm receipt of the February 20, 1984 request for a clarification of my November 28, 1978 Supplemental Award. In order to insure a full understanding of your question, I called you both on February 29, 1984 to clarify the underlying facts. You both confirmed that you agree that Warren would have been promoted to a road patrol vacancy in May, 1976, had he not been discharged prior thereto. As my Supplemental Award ordered that Warren be made whole "in all respects, including the restoration of seniority", his road patrol seniority would commence on the date the May, 1976, vacancy was filled and his seniority would be greater than the employee who in fact filled the vacancy due to Warren's discharge status at that time.

I hope this resolves your problem.

In January, 1989, the County, the current collective bargaining representative (Labor Association of Wisconsin, Inc.), and employees Larry Warren, Kenneth Bitsky, Scott McLaughlin, Mark Puerling and Randy White signed the following Stipulation:

Notwithstanding the award of Arbitrator Peter G. Davis (Case XXVI No. 22633 MA-1088), and subsequent clarifications, a question still exists as to what is Grievant Warren's classification seniority as a Patrol/Traffic Officer in light of said award. While the March 5, 1984 letter of clarification appears, on its face, to address the issue, other employees in the bargaining unit claim that the information supplied to Arbitrator Davis, which formed the basis for the 3/5/84 clarification, was erroneous and, accordingly, the clarification is flawed.

Because the question of Grievant Warren's classification seniority remains an issue, it is hereby agreed, by all interested parties, that Arbitrator Davis shall be requested to conduct another hearing into this matter, on the single issue of determining Warren's classification seniority, and to subsequently issue an award regarding the same. The issuance of this award shall constitute the final chapter in this case and, to that end, the parties agree that Arbitrator Davis' award shall be final and binding.

Pursuant to that Stipulation, I convened hearing in Friendship, Wisconsin on May 9, 1989 to give all parties to the Stipulation an opportunity to present evidence and argument on behalf of their respective positions. Written argument was received on May 16, 1989 from Kenneth Bitsky and the Adams County District Attorney and Corporation Counsel.

The focal point of the current dispute is whether I correctly determined in March, 1984 that Warren's road patrol seniority began when the May, 1976 road patrol vacancy was filled. It is asserted by employes Bitsky, McLaughlin and Puerling, and by the District Attorney/Corporation Counsel that my March, 1984 decision was based upon an erroneous assumption that Warren would have filled the May, 1976 road patrol vacancy. Sopher, the undersheriff in March, 1984 and the County's representative in the 1984 clarification proceedings, contended during the May, 1989 hearing that the information upon which I acted in March, 1984 was correct.

Having considered the evidence and argument presented by all concerned, I am persuaded that there is no basis for altering my March, 1984 decision as to Warren's seniority. Where, as here, individuals identifying themselves as representatives of the parties to a labor agreement (Sopher on behalf of the County and Spencer on behalf of the bargaining representative) agree upon a fact (when would Warren have filled a road patrol vacancy) and where, as here, a final and binding award is issued based upon that fact, the possibility that the parties were not correct as to the critical fact does not provide a sound basis for now reaching a different result. Absent compelling and extraordinary circumstances not present here, a final and binding determination of an issue should not subsequently be altered. To conclude otherwise would be to invite chaos and endless litigation. Therefore, I hereby reaffirm my March, 1984 Award.

Dated at Madison, Wisconsin this 8th day of August, 1989.

By Peter G. Davis /s/
Peter G. Davis, Arbitrator